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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

JESSIE LEE MARTINEZ,

Defendant and Appellant.

E069324

(Super.Ct.No. BLF1700072)

OPINION

APPEAL from the Superior Court of Riverside County. Otis Sterling III, Judge.  
Affirmed.

Kevin Smith, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney  
General, Julie L. Garland, Assistant Attorney General, Daniel Rogers and Christopher P.  
Beesley, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant and appellant Jessie Lee Martinez of two counts of infliction of corporal injury on a spouse (Pen. Code<sup>1</sup>, § 273.5, subd. (a), counts 1 & 4), felony child endangerment (§ 273a, subd. (a), count 2), dissuading a witness (§ 136.1, subd. (b)(1), count 3), false imprisonment (§ 236, count 5), and misdemeanor child endangerment (§ 273a, subd. (b), count 6). A trial court sentenced defendant to a total term of 13 years four months in state prison on counts 1 through 5 and 365 days in county jail on count 6.

On appeal, defendant argues there was insufficient evidence to support the felony child endangerment conviction in count 2. We affirm.

### FACTUAL BACKGROUND

Defendant and his wife were married in 2011. They had two children together. Defendant had a history of physical violence against his wife, which she had reported to the police in the past.

On or about March 29, 2016, defendant and his wife got into an argument outside in the carport. They headed toward their residence, and defendant locked the security door to the patio, so she could not get in. As his wife was trying to get in, defendant laughed at her, but then unlocked it. When they went inside, they continued arguing. Defendant grabbed her and tried to hug and kiss her. When she pushed him away, he said she belonged to him, and she was not allowed to leave him. His wife started washing the dishes, and defendant grabbed the nozzle and threatened to smash her face

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<sup>1</sup> All further statutory references will be to the Penal Code, unless otherwise indicated.

with it, if she did not look at him when he was talking. Defendant yelled in her face and pushed her against the sink. Their five-year-old daughter (the child) was in the hallway, and defendant's wife could hear her crying and yelling for them to stop. His wife told defendant to stop, and he went over to the child and grabbed her and picked her up. The child screamed and cried. Defendant put her down, and his wife went over to her. She picked her up, and the child wrapped her legs around her waist. Defendant's wife held the child on her right hip, with her right arm around her.

Defendant's wife then walked to the bedroom, and defendant followed her. The child was still upset, and defendant told her to "shut up." He then threw his wife on the bed, put his hand around her neck, and tried to choke her. She was still holding the child. One of the child's legs was partially behind the wife's hip, and the child's arm was behind her shoulder. Defendant held his wife down by her throat by putting his weight on her for at least one minute. It was hard for her to breathe, and she was not able to talk. She was trying to tell him to get off because he was smashing the child's arm. The child was screaming, crying, and yelling about her arm. Defendant's wife could feel the child's arm wiggling, and there was a lot of pressure on her arm. Defendant eventually let go of his wife and then punched her in the face. He started crying and said he was sorry. He also said if she called the police, he would fight them in front of their daughter. Defendant eventually left, and his wife went to the police station to file a report.

## ANALYSIS

### The Evidence Was Sufficient To Support Defendant's Conviction

Defendant contends the evidence is insufficient to support his conviction of felony child endangerment.<sup>2</sup> As such, he requests this court to reduce the conviction to misdemeanor child endangerment, under section 273a, subdivision (b). We conclude the evidence was sufficient to support the felony conviction.

#### *A. Standard of Review*

“In deciding the sufficiency of the evidence, we ask whether ‘ “after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” ’ [Citation.] Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence. [Citation.]” (*People v. Maury* (2003) 30 Cal.4th 342, 403 (*Maury*).) “Reversal on this ground is unwarranted unless it appears ‘that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].’ ” (*People v. Bolin* (1998) 18 Cal.4th 297, 331.)

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<sup>2</sup> We note the offense was also referred to as child abuse during the trial.

*B. The Evidence Was Sufficient*

Section 273a, subdivision (a), provides: “Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered, shall be punished by imprisonment . . . .”

This statute “refers to conduct by a person ‘under circumstances or conditions *likely* to produce great bodily harm or death.’ ” (*People v. Chaffin* (2009) 173 Cal.App.4th 1348, 1351 (*Chaffin*).) “ ‘[L]ikely’ as used in section 273a means a substantial danger, i.e., a serious and well-founded risk, of great bodily harm or death. We believe in the context of child endangerment this definition of the term ‘likely’ draws a fair balance between the broad protection the Legislature intended for vulnerable children and the level of seriousness required for a felony conviction.” (*People v. Wilson* (2006) 138 Cal.App.4th 1197, 1204 (*Wilson*).) “A misdemeanor status is to those acts committed ‘under circumstances or conditions *other than* those likely to produce great bodily harm or death.’ ” (*People v. Jaramillo* (1979) 98 Cal.App.3d 830, 835 (*Jaramillo*), italics added.)

Here, the jury was instructed that to prove defendant guilty, the People had to show that: (1) defendant willfully inflicted unjustifiable physical pain or mental suffering on a child; or (2) while having care or custody of a child, willfully caused or permitted the child to be placed in a situation where the child’s person or health was endangered,

and he inflicted pain or suffering on the child or permitted the child to suffer or be injured or endangered under circumstances or conditions likely to produce great bodily harm or death, and he was criminally negligent when he caused or permitted the child to suffer or be endangered. The jury was further instructed that the child did not need to actually suffer great bodily harm.

There was sufficient evidence to support a conclusion that defendant willfully caused the child to be placed in a situation where her person or health was endangered, and he permitted her to suffer under circumstances likely to produce great bodily harm. Defendant's conduct of shoving his wife onto a bed while she was carrying the child created circumstances likely to produce great bodily harm. The evidence showed that defendant put his hand on his wife's throat and held her down, putting his weight on her. Since the child's arm was behind his wife's shoulder, it became pinned under her body. In other words, the child's arm was being pressed under the weight of her mother, as well as the weight defendant was applying. Defendant's wife could feel the child's arm wiggling under her. The child was screaming, crying, and yelling about her arm, indicating she was in immense pain from the pressure of the weight on her arm. Even though the child was screaming, and his wife was trying to tell him to get off because he was smashing the child's arm, defendant kept choking his wife for at least a minute. A jury could conclude these were circumstances or conditions likely to produce great bodily harm.

In his opening brief, defendant argues the evidence showed that all of his actions were directed toward his wife, not the child, as he did not touch the child in any way. He further asserts that the child suffered no injuries. In his reply brief, defendant argues that “the mere *possibility* of great bodily harm is not the test” for a conviction under section 273a, subdivision (a). Section 273a provides for felony punishment when someone “willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health is endangered.” (See *Chaffin, supra*, 173 Cal.App.4th at p. 1351.) There is no requirement of direct touching. Moreover, for felony punishment, “there is no requirement that the actual result be great bodily injury. The statute is intended to protect a child from an abusive situation in which the *probability* of serious injury is great.” (*Jaramillo, supra*, 98 Cal.App.3d at p. 835, italics added.) Here, the probability of serious injury was great, where a five-year-old’s arm was trapped under the weight of two adults, and she was wiggling it and screaming in pain. Such circumstances reasonably allowed the jury to find great bodily harm likely. (See *Wilson, supra*, 138 Cal.App.4th at p. 1205 [where the defendant made her son go through the open window of a house to facilitate a burglary, the court found these circumstances exposed the child to serious physical dangers, e.g., someone in the home might react violently to the trespass, etc. “Such circumstances reasonably allowed a finding that it was ‘likely,’ i.e., there existed a substantial danger . . . of great bodily harm . . . .”].)

Viewing the evidence in the light most favorable to the prosecution, as we must (*Maury, supra*, 30 Cal.4th at p. 403), we conclude the evidence was sufficient to convict defendant of felony child endangerment.

DISPOSITION

The judgment is affirmed.

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McKINSTER  
J.

We concur:

RAMIREZ  
P. J.

MILLER  
J.